

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

DAVID J. HERNANDEZ,

Defendant.

8:09CR27

MEMORANDUM AND ORDER

This matter is before the Court on the Defendant's pro se "Motion for Relief from § 2255 Judgment" (Filing No. 157), construed as a successive motion under 28 U.S.C. § 2255.

The Court issued a Memorandum and Order and Judgment summarily dismissing all of the claims raised in the Defendant's § 2255 motion. This Court and the Eighth Circuit Court of Appeals denied the Defendant's motion for a certificate of appealability.

The Defendant now requests relief under Federal Rule of Civil Procedure 60(b). He argues that his motion should not be considered as a successive § 2255 motion because in the Memorandum and Order denying him § 2255 relief this Court did not address his claim of ineffective assistance of counsel in failing to obtain a promise from the government in the plea agreement to file a motion in exchange for already provided substantial assistance. In fact, the claim was addressed. (Filing No. 142, at 5.) Regardless, the Defendant may not relitigate his § 2255 motion through Rule 60(b) in what is essentially a successive motion filed without the Eighth Circuit's approval. *United States v. Matlock*, 107 F. App'x 697, 698 (8th Cir. 2004).

IT IS ORDERED:

1. The Defendant's pro se "Motion for Relief from § 2255 Judgment" (Filing No. 157), construed as a successive motion under 28 U.S.C. § 2255 is denied; and
2. The Clerk is directed to mail a copy of this Memorandum and Order to the Defendant at his last known address.

Dated this 14th day of September, 2012.

BY THE COURT:

s/Laurie Smith Camp
Chief United States District Judge